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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

RICHARD BEGG,

Petitioner,

vs.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS, and the CITY OF PARK RIDGE, ILLINOIS,

Respondents.

On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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I.

A FEDERAL QUESTION HAS BEEN ADEQUATELY PRESENTED TO THE STATE COURT.

Respondents suggest that this Court lacks jurisdiction to review this matter because Petitioner has never raised a federal question in the state court. This contention borders on the ridiculous. Any review of the record in this case will clearly demonstrate that it has always been the Petitioner's position that he could not be disciplined for failure

to meet a traffic ticket quota because such a quota is against public policy. A quota system logically mandates that police officers charge members of the public with a certain number of criminal infractions over a designated time period whether or not such charges are warranted, or risk disciplinary measures if they fail to do so. By any reasonable interpretation, the threat of groundless arrests has constitutional implications. These implications form the basis for Petitioner's argument that the quota system is against public policy.

Petitioner raised the issue at the administrative hearing when he argued in favor of his motion to dismiss the disciplinary charges, since they violated public policy. (Transcript of pages 12 and 13 of said proceedings is reprinted herein as Appendix A.)

With reference to that motion to dismiss, the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, considered that issue and denied the motion of the plaintiff for dismissal relative to his legal position that the traffic quota system violated public policy as is reflected by the proceedings before it. (Transcript of proceedings, pages 18 and 19, are reprinted herein as Appendix B.)

Subsequently, Petitioner raised the issue in his complaint for administrative review in the Circuit Court of Cook County, Illinois, specifically paragraph 5, wherein he states that a traffic/ticket quota system is against public policy (Respondents' Appendix page 5A).

Furthermore, in the aforesaid complaint, in his prayer, paragraph A, he requests that the record before the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, be judicially reviewed, which, in effect, includes the motion to dismiss before the adminis-

trative hearing pertaining to the issue of the traffic quota being against public policy (Respondents' Appendix page 6A).

Likewise, in his brief, Petitioner states that the traffic quota system is against public policy in that it deprives the Park Ridge, Illinois, police officer of his discretion to determine whether or not a violation in question justifiably deserves the issuance of a traffic ticket (Respondents' Appendix page 11A).

The issue was again faced by the Illinois Appellate Court. In fact, the opinion of that court states:

> Plaintiff's central challenge to the regulation at issue appears to be that they establish an absolute quota to be met by the police officers and that such quota systems are per se against public policy. 110 Ill. App. 3d 141, 145.

Considering the appellate court's language, Respondents' claim that the issue was not raised either administratively or in the state courts and is being presented here for the first time is incredible.

Furthermore, based on the record, the Illinois Supreme Court clearly had the issue placed before it. The circuit court based its decision to reverse the suspension on Petitioner's argument that a traffic ticket quota system is inherently against public policy. This contention was acknowledged by the Illinois Appellate Court, but only found persuasive by one justice who in turn wrote a specially concurring opinion to that effect.

The failure of the Illinois Supreme Court to deal effectively with the issue presented to it is not a bar to the jurisdiction of this Court. The issue of whether a federal question was raised sufficiently in the state courts is itself a federal question which may properly be decided by this Court. *Street v. New York*, 394 U.S. 576 (1969).

The standards governing the adequacy of the presentation of constitutional issues in the state courts were discussed by this Court in *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928). The Court said:

> No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefore be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented. Of course the decision must have been against the claim of invalidity, but it is not necessary that the ruling should have been put in direct terms. If the necessary effect of the judgment has been to deny the claim, that is enough. 278 U.S. at 67.

The record in this case clearly shows that the question of the constitutional validity of a traffic ticket quota system has been placed before all the courts at the state level, and that the issue has been resolved against the Petitioner by the Illinois Supreme Court. Therefore, the jurisdictional threshold has been met; and this Court is free to consider the merits of Petitioner's claim.

II.

THE DECISION OF THE ILLINOIS SUPREME COURT DOES NOT REST ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

Respondents further suggest that this Court cannot review the decision of the Illinois Supreme Court because an adequate state ground exists for that decision. The asserted adequate state ground is the general principle of Illinois law that administrative regulations are presumptively valid and that they will only be set aside if arbitrary or capricious. *See, Midwest Petroleum Marketers*

Association v. City of Chicago, 82 Ill. App. 3d 494 (1980), *Illinois Coal Operators Association v. Pollution Control Board*, 37 Ill. App. 3d 264 (1976).

Petitioner maintains the view articulated by Justice Johnson of the Illinois Appellate Court in his specially concurring opinion that special considerations are present when the regulation at issue requires a police officer to charge members of the public with a certain amount of criminal activity regardless of whether the charges are warranted. The due process considerations necessarily implicated in such a situation counsel against merely applying the usual test for validity of an administrative regulation.

This Court will only decline to review a state court decision when a sufficient non-federal ground is both independent of the federal ground and adequate to support the judgment. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). Petitioner submits that, due to the nature of the regulation, the state court's decision was necessarily interwoven with the federal law. For that reason, this Court is free to ascertain for itself, in order that constitutional guarantees be enforced, whether the asserted non-federal ground adequately supports the judgment. *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931).

In this case, the Court is being asked to protect the integrity of a part of the United States Constitution, not to decide an issue of state law. Because the constitutional question is unavoidably involved in any ruling on the validity of a traffic ticket quota system, the decision of the Illinois Supreme Court is subject to review by this Court. *Michigan v. Long*, ... U.S. ....., 103 S.Ct. 3469 (1983), *Enterprise Irrigation District v. Farmer's Mutual Canal Company*, 243 U.S. 157 (1917).

III.

THE PETITIONER HAS STANDING TO CONTEST THE VALIDITY OF THE TRAFFIC TICKET QUOTA REGULATION.

Finally, Respondents urge the petition be denied because the Petitioner lacks standing to contest the traffic ticket quota regulation. However, to assert that the Petitioner is merely vicariously asserting the rights of innocent motorists misapprehends the nature of Petitioner's claim.

The Petitioner entered the court system to contest the suspension he received for not writing enough citations. He was disciplined on the basis of what he contends is an unconstitutional regulation. Petitioner is attacking the traffic ticket quota because it has injured him personally. The constitutional element of standing is the plaintiff's demonstration of any injury to himself that is likely to be redressed by a favorable decision on his claim. *Board of Regents of University of California v. Bakke*, 438 U.S. 265 (1978), *Warth v. Seldin*, 422 U.S. 490 (1975). The Petitioner meets this requirement as he was injured by operation of the traffic ticket quota.

Moreover, the fact that innocent motorists may also benefit from a favorable decision on the Petitioner's claim does not operate to deny him standing to contest the regulation. This Court has the power to redress the complaining party's injury whether or not the judgment may benefit others collaterally. *Warth* at 499.

CONCLUSION

For the reasons enumerated herein, the writ should be granted.

Respectfully submitted,

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APPENDIX A

12* Mr. Jakala: * * * The third consideration is that in studying the Park Ridge suggested issuance of traffic citations and other related-type activity and by setting up a specific amount of tickets that must be issued per day, I cannot see how one can logically state that it is not a quota system. Anybody in sales knows that if a salesman is told you must sell $100
13 worth of items, that's your quota or else it's your job. Is that any different than what is being asked of the police officers of this particular police department?

It is my contention that it is a quota system, and we know that quota systems in police departments are against public policy.

Name me a police department that will say a quota system is an applicable way of doing business, and there isn't one police department that will say, "Yes, we have a quota system and we enforce it because it really means bringing in revenue more than perhaps enforcing the law in a proper sense."

And I say for that reason, my motion to dismiss has been filed; and I ask very humbly and respectfully of this Board to consider the merits of it. Thank you.

* * *

* Numbers in margin refer to the page numbers of the Transcript of Proceedings.

APPENDIX B

18* Mr. Cruse: * * * As to the question of whether requiring officers to make certain amount of arrests per day is contrary to public policy, that is a matter which this Board is hardly qualified to rule on, and
19 there is some question as to whether arrests per day is in fact the basis of these numbers.

The Board therefore must deny the motion to dismiss, but without any prejudice to some of the argument which have already been opened on here.

* * *

* Numbers in margin refer to the page numbers of the Transcript of Proceedings.